IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 159 OF 2001.

Rambhau Mahadev Bombale .... Appellant.
(Orig.Accd.No.1)

V/s

The State of Maharashtra ....Respondent.

Shri A.P. Mundargi, Adv. for Shri Shailesh Kantharia for the appellant.

Mrs. U. V. Kejriwal, APP for the State.

CORAM: V.G. PALSHIKAR
AND
SMT.NISHITA MHATRE, JJ.

8th April, 2005.

Oral Judgment: (**Per Palshikar, J**)

1. Being aggrieved by the order of conviction and sentence passed by the Additional Sessions Judge, Pune in Sessions Case No.398 of 1999 on 25.1.2001 the appellant-accused has preferred this appeal on the grounds mentioned in the memo of appeal and also verbally canvassed before us.

2. With the assistance of the learned counsel for the appellants and the learned Additional Public Prosecutor we have perused the entire evidence and

reappreciated the same.

3. On reappreciation of the entire evidence on record the prosecution case as revealed by it is that on 4.6.1999 one Suvarna Kalate wife of Maruti Kalate filed a report in the police station that her husband Maruti Kalate is missing since 2.6.1999. The police searched for the husband Maruti. Search was also launched by the accused No.1 and other relations of the victim but there was no trace.

4. On 3.6.1999 a dead body was found near the bridge in the area of Loni Kalbhor police station and the dead body was taken to morgue. It was so smashed that it could not be identified. It was therefore kept in the Sassoon Hospital morgue. The death was asserted as homicidal and the station house officer of Loni Kalbhor police station started inquiry in the vicinity of the place where the dead body was found as also in the neighbouring place regarding ascertainment of the identity of the dead body.

5. According to the prosecution the accused No.1 present appellant was last seen together with the victim Maruti on 2.6.199 at about 5.30 p.m. When the victim left his scooter for repairs. Thereafter there is no trace of this person Maruti. Ultimately, his wife and others went to the morgue of Sassoon Hospital and the wife looking to the thumb of the left leg identified the body as to be that of the victim Maruti her husband. Investigation was going on, the police came to know about the accused No.1 with the assistance of some others having washed the blood stained Maruti van. They therefore accosted the accused who could not explain why the van was washed therefore he

along with three others were prosecuted for committing murder of the victim Maruti Kalate. The prosecution has examined in all 16 witnesses to prove its case and the learned trial Judge on appreciation of entire evidence came to the conclusion that there is no evidence whatever against the other accused persons and therefore proceeded to acquit them but chose to convict the appellant-accused solely on the ground that he was last seen together with the victim in the evening of 2.6.1999 and except this evidence and the evidence of alleged blood stained Maruti van there is no other evidence to connect the accused with the offence. The learned counsel appearing on behalf of the appellant-accused therefore prayed for acquittal.

6. As aforesaid we have scrutinized the entire record and reappreciated the evidence. The prosecution has examined in all 16 witnesses to prove its case and the learned trial Judge convicted appellant as aforesaid to suffer imprisonment for life.

7. P.W. 1 – Sanjay Datye is the doctor who examined the accused after his arrest and proved that the accused had some injury on his left hand. Other witnesses have stated that they had noticed this injury around 3rd or 4th June, 1999 and queried as to how it was caused when the accused appears to have told them that it was caused by tin.

8. P.W. 2 – Dilip Kalate is the brother of the deceased who says that he identified the body of the deceased but no cogent reasons are given by the witness to show or to state how he identified the body to be that of the victim Maruti. P.W. 3 –

Ranabaod Sakate is the garage owner who took the vehicle of the victim for repairs on 2.6.1999 and stated that the person who gave the vehicle never came back to take it. This witness therefore proves that the victim gave his scooter to this witness for repairs on 2.6.1999. P.W. 4 – Pradeep More is the person who saw the accused going with the victim Maruti on 2.6.1999 to the garage. P.W. 5 – Ashok Kadam is another witness who saw them together on 2.6.1999 around 2.30 p.m. And had noticed the injury on the hand of the accused on 4.6.1999. He also claimed to have identified the body of the victim Maruti along with P.W. 2 who states how he recognised the body as that of the victim when face was completely smashed. To the same effect is the evidence of P.W. 6 – Sudhir Chopade. P.W. 7 – Ashok Ingale is the panch who seized the van and noticed the blood stains on it but the blood stains are not proved to be that of the accused. P.W. 8 – Vasant Salvi is the constable who took the dead body to the morgue on 3.6.1999. P.W. 9 – Vijay Wase is the doctor who conducted the post mortem and proved homicidal death of the victim.

9. P.W. 10 – Suvarna Kalate is the wife of the victim who says that on 2.6.1999 she saw Maruti going witness going with the vehicle for repairs. The accused had inquired with her about Maruti on the same day around 7.30 p.m. However nothing was done by the witness and she continued the search of the husband along with others as also the accused No.1. When she went to the morgue of Sassoon Hospital she identified the body being that of Maruti on the basis of thumb injury on the left leg. She has candidly admitted that the face of the body was unrecognizable and has not given any cogent explanation as to how she could identify the body as that of her husband

only by looking to the thumb of the left leg. In her cross examination she is asked about Maruti sustaining any permanent injuries to his body to which she has deposed in the negative. It therefore seems improbable that the victim did not have any permanent injuries to thumb of left leg and yet only because it was little cracked it was identified to be the body of the victim. P.W. 11 – Sunil Dhamal is the Jailor who has proved certain letters written by the accused. P.W. 12 – Dilip Kurandale is the constable who received the report about the dead body being discovered near the bridge. P.W. 13 – Nandkumar Gaikwad is the person who sole van to the accused. His evidence is wholly inconsequential as the ownership of the van has nothing to do with the offence. P.W. 14 – Sanjay Shivale and P.W. 15 – Navnath Lokhande have turned hostile who witnesses to burning of clothes and washing of the van by accused with some others. P.W. 16 – Chandrakant Ombase is the investigating officer. It will thus be seen that the entire evidence is circumstantial in nature. There is nothing whatsoever in the deposition of witnesses as to the motive of the accused No.1 killing the victim. There is no proof of any enmity between the parties and the only proof on record to show that the dead body was that of the victim Maruti is the statement of Suvarna and two others who admit that the face was smashed beyond recognition and yet say that it was that of Maruti. Suvarna says that it was so because of the cracked finger of the thumb of left leg. Others say that they identified because of the general get up. The recoveries are not proved, washing of the van is not proved, blood stains are not proved to have been those of the kind of the blood of the victim was and the learned trial Judge has on appreciation of this evidence thought it fit to acquit three other accused persons for lack of evidence. Merely because accused was indulged in search for the victim and was

last seen together with the victim on 2.6.1999 could not have in law convicted the accused. There is no clinching evidence that the victim must have died on 2.6.1999. If the death has occurred any time thereafter i.e. 3rd or 4th June, 1999 then accused being last seen together with the victim on 2.6.1999 is inconsequential. In any case this cannot be the basis for coming to the conclusion of conviction under section 302. In our opinion, learned trial Judge committed an error in convicting the accused No.1 alone when the evidence was grossly insufficient for any conviction. In our opinion, the order of conviction is unsustainable in law and is therefore set aside. The appellant-accused is acquitted of the offence with which he was charged. He is liable to be set at liberty forthwith if not require otherwise.